SINGLE BENCH (9)

CF 100L (1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION [C] NO. 4657 /2006

PETITIONER :- Smt. Aabha Patel, wife of Shri Manohar Patel, aged about 40 years, Caste Aghariya, resident of village – Kaunsara, working as a Sarpanch of village Panchayat Kaunsara, Janpad Panchayat Bagbahra, Tahsil and District Mahasamund [C.G.].

P.R. No. 4654/06
Presented by Shri V.K. Pandey
dated 25/8/06

VERSUS

RESPONDENTS :- 1] State of Chhattisgarh, Through the Secretary, Panchayat and Social Welfare Department, D.K.S. Bhavan, Raipur [C.G.].

2] The Collector, Mahasamund, District Mahasamund [C.G.].

3] The Sub Divisional Officer (Revenue) [Prescribed Authority] Mahasamund, District Mahasamund [C.G.].

4] The Tahsildar [Presiding Officer] Mahasamund, District-Mahasamund [C.G.].

5] Shrawan Kumar Dhruv, son of Kheduram, Up-Sarpanch of village Panchayat Kaunsara, Village Panchayat Kaunsara, Block Bagbahra, District Mahasamund [C.G.].

6] Sukalu Ram Sahu, son of Johat Ram Sahu, Panch, Ward No.1,

7] Nand Kumar Chakradhari son of Janak Ram Chakradhari, Panch Ward No.2.

8] Smt. Dhasni Bai wife of Dashrat Sahu, Panch Ward No.3.

9] Smt. Shailendri Bai wife of Gendram Thakur, Panch Ward No.4.

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बिलासपुर (छ.ग.)

(5) (2)

10] Ramadhar Sen, son of Dhasiya Sen, Panch Ward No. 5.

11] Smt. Shyama Bai Sahu, wife of Kheduram Sahu, Panch Ward No. 8.

12] Janak Ram Dhruv son of Sukhiram Dhruv, Panch Ward No.9.

13] Ghasiram Dhruv son of Panchuram Dhruv, Panch Ward No.10.

Respondent no. 6 to 13 are permanent resident of village Kaunsara, village Panchayat Kaunsara, Block Bagbahra, District Mahasamund [C.G.].

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(68)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (C.) NO.4657 OF 2006

Petitioner : Smt. Aabha Patel

versus

Respondents : State of Chhattisgarh and others

Present : Mr. V.K.Pandey, counsel for the petitioner.
Mr. Sushil Dubey, Government Advocate for respondents No.1 to 4.
Mr. Manoj Paranjpe, counsel for respondents No.5 to 11 and 13.
None appears for respondent No.12.

ORDER
(Passed on 11th Day of December, 2006)

Learned counsel appearing for the petitioner submits that the petitioner was elected Sarpanch of Village Panchayat Kaunsara, Janpad Panchayat Bagbahra, District Mahasamund in the election held in the year 2004. It is further submitted by learned counsel that the so called no confidence motion was placed in the general body meeting on 5-7-2006, but could not be carried out. Being aggrieved, Up-Sarpanch and other members filed a reference before the Collector, Mahasamund under sub-section (4) of Section 21 of the Madhya Pradesh/Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (henceforth 'the Adhiniyam, 1993'). The Collector, without affording any opportunity of hearing to the elected Sarpanch, i.e., the

petitioner, decided the reference holding that the no confidence motion against the petitioner was carried out.

2. Learned counsel appearing for the petitioner further submits that the Collector has no jurisdiction under sub-section (4) of Section 21 of the Adhiniyam, 1993. Sub-section (4) of Section 21 of the Adhiniyam, 1993 clearly provides interference by the Collector in case the no confidence motion has been carried out. In the present case, according to learned counsel for the petitioner, the no confidence motion was not carried out.

3. On the contrary, Mr. Manoj Paranjpe, learned counsel appearing for respondents No.5 to 11 and 13, submits that the no confidence motion was carried out against the petitioner by 9 votes out of 13 members present.

4. Be that as it may, this involves question of facts, as learned counsel appearing for the petitioner submits that the no confidence motion was not carried out and on the contrary, learned counsel appearing for respondents No.5 to 11 and 13 submits that the same was carried out.

5. The impugned order dated 8-8-2006 (Annexure P-1) was passed by the Collector without issuing any notice or affording any opportunity of hearing to the elected Sarpanch, i.e., the petitioner, who is the most affected party in the adjudication. The order of the Collector is bad on the ground that principle of natural justice has not been followed because the most affect party, i.e., the elected Sarpanch was

not served any notice. Secondly, the Collector ought to have considered further whether the Collector was competent to hear the reference, in view of the clear provisions of sub-section (4) of Section 21 of the Adhiniyam, 1993.

6. For the reasons aforementioned, the order of the Collector dated 8-8-2006 (Annexure P-1) is set aside and the matter is remanded to the Collector, Mahasamund for decision afresh after issuing notice to the petitioner herein in accordance with law within a period of three weeks. It is further made clear that the observations made hereinabove shall not come in the way of decision of the Collector in accordance with law.

7. The petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gopal